

involving the Communications Act, a U.S District Court has applied the "filed rate doctrine" to a carrier subject to the Commission's policy of regulatory forbearance. See MCI Telecommunications Corporation v. TCI Mail, Inc., 772 F. Supp. 64 (D.R.I. 1991). There, the court held that MCI's tariffed rate applied despite the fact that MCI had orally promised the customer lower rates, and stated as follows:

Under the "filed tariff doctrine," a tariff filed with the FCC supersedes all other agreements for interstate telephone service.<sup>41/</sup>

Although MCI had the right under the Commission's permissive forbearance policy to offer service without filing a tariff, where it chose to offer a service pursuant to a filed tariff, the filed rate doctrine precluded it from charging any customer any rate other than the filed rate for that service.

Clearly, if there is no tariff "filed with the FCC," the doctrine does not apply. If there is no statutory obligation to file tariffs or if the Commission has lawfully forbore from requiring carriers to file tariffs and the carrier has not filed a tariff, then the "filed rate doctrine" and those cases applying that doctrine -- including Maislin -- do not prevent carriers from charging rates based on contract rather than tariffs. Where common carriers offer their services pursuant to filed tariffs, only the tariffed rates may be charged for those services. Under Maislin and the filed rate doctrine, a common carrier cannot

---

<sup>41/</sup> 772 F. Supp. at 66.

provide service to some customers pursuant to rates contained in filed tariffs and offer the same service to other customers at rates that differ from those in their filed tariffs.

E.     Enactment of the Telephone Operator  
Consumer Services Improvement Act is Further  
Evidence of the Commission's Authority to  
Forbear from Requiring Non-dominant Carriers  
to File Tariffs

In October 1990, Congress enacted the Telephone Operator Consumer Services Improvement Act of 1990.<sup>42/</sup> That act includes a comprehensive scheme for the regulation of interstate interexchange operator-assisted telephone services. Section 226(h) requires providers of such operator services to file with the Commission "informational" tariffs. Section 226(h)(2) requires the Commission to review those informational tariffs and to impose certain requirements on operator service providers whose rates, upon review, are found to be unjust or unreasonable. The Operator Services Act does not empower the Commission to suspend or to reject those informational tariffs, nor does it authorize the Commission to "prescribe" just and reasonable rates. In short, the Commission's tariff regulatory authority under Title II of the Act (except for the authority contained at Section 226) does not apply to operator service provider informational tariffs.

---

<sup>42/</sup> P.L. 101-435, 104 Stat. 987. That act is codified at Section 226 of the Communications Act, 47 U.S.C. § 226 (1991).

With the exception of AT&T, all interexchange operator service providers are non-dominant carriers and are subject to tariff forbearance. If tariff forbearance exceeded the Commission's authority under the Act, it would not have been necessary for Congress to implement new legislation mandating the filing of informational tariffs. Rather, Congress could have directed the Commission to enforce the tariff filing requirements already in the Act. That Congress found it necessary to statutorily require certain non-dominant carriers subject to forbearance to file informational tariffs demonstrates Congressional recognition of the Commission's authority under the Act to forbear from requiring non-dominant carriers to file tariffs.


#### CONCLUSION

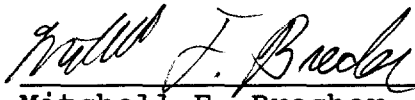
For all of the foregoing reasons, the Commission has ample authority under the Communications Act to forbear from requiring non-dominant carriers to file tariffs. Moreover, the Commission's permissive tariff forbearance has served the public interest and furthered the Commission's goals of promoting development of a competitive marketplace for telecommunications services. It has enabled new service providers to enter the market and to provide innovative services based upon their perceptions of consumer demand with minimal regulatory interference and delay.

Accordingly, GTE Service Corporation respectfully urges the Commission to retain its policy of tariff forbearance for those common carriers not deemed to be dominant.

Respectfully submitted,

GTE SERVICE CORPORATION

  
Joan M. Griffin  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036  
(202) 463-5276

  
Mitchell F. Brecher  
DOW, LOHNES & ALBERTSON  
1255 Twenty-third Street N.W.  
Washington, D.C. 20037  
(202) 857-2835

Its Attorneys

March 30, 1992